2011 IL App (2d) 091244-U
No. 2—09—1244
Order filed July 14, 2011

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 09—DV—1661
KATRICE L. BROWN,	)	Honorable Elizabeth W. Sexton,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

Held: (1) The trial court substantially complied with Rule 605(c) where defendant signed a form setting out the admonishments immediately before she pleaded guilty and where the court confirmed her understanding of those admonishments immediately after sentencing; and (2) defendant was entitled to a $55 credit against her $200 domestic-violence fine, for the 11 days she spent in presentencing custody.

ORDER

¶ 1 Defendant, Katrice L. Brown, entered a negotiated guilty plea to domestic battery (720 ILCS 5/12—3.2(a)(1) (West 2008)) and was sentenced to 24 months' probation and the payment of various fines and fees, including a $200 domestic-violence fine (see 730 ILCS 5/5—9—1.5 (West 2008)). Without moving to withdraw the plea, defendant timely appealed. On appeal, she contends that (1)

the cause must be remanded for the trial court to admonish her of her appeal rights in compliance with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001); and (2) because she was in custody for 11 days before being sentenced, she is entitled to a credit of $55 against her $200 domestic-violence fine (see 725 ILCS 5/110—14(a) (West 2008)). The State confesses error on the second issue. We modify the judgment to award the credit, but we dismiss the appeal.

¶ 2 On October 11, 2009, defendant was charged with two counts of domestic battery (720 ILCS 5/12—3.2(a)(1), (a)(2) (West 2008)). The trial court appointed counsel for her. On the afternoon of October 21, 2009, the parties announced that they had reached a plea agreement. The trial judge admonished defendant and ascertained that her plea was voluntary, and the State provided the factual basis for the plea (see Ill. S. Ct. R. 402 (eff. July 1, 1997)). After hearing the terms of the plea agreement, the judge pronounced the sentence of 24 months' probation and a "$210[1] domestic violence fee [*sic*]." The proceeding continued:

> "THE COURT: All right, do you understand the entire sentence that I've entered, Ms. Brown?
>
> THE DEFENDANT: Yes, Ma'am.
>
> THE COURT: Do you have any questions at all?
>
> THE DEFENDANT: No, Ma'am.
>
> THE COURT: You have a right to appeal it. Do you understand that?
>
> THE DEFENDANT: Yes, Ma'am.
>
> THE COURT: And you have read and signed your notice of appeal rights?
>
> THE DEFENDANT: Yes, Ma'am.

[1] This amount consisted of the $200 domestic-violence fine and $10 in domestic-battery fines.

THE COURT: Do you have any questions on your appeal rights?

THE DEFENDANT: No, Ma'am."

¶ 3 The "Notice of Appeal Rights" to which the judge referred is in the record and is file-stamped October 21, 2009, 2:19 p.m. The lower half of the one-page form states:

"Pursuant to Supreme Court Rule 605(c), at the time of imposing sentence the Court advised the defendant in open court that he/she has the following rights on appeal:

1. That the defendant has a right to appeal;

2. That prior to taking an appeal the defendant *must* file in the trial court, within thirty (30) days of the date on which sentence is imposed, a written motion asking to have the judgment vacated, *and* for leave to withdraw the plea of guilty, setting forth the grounds for the motion;

3. That if the motion is allowed, the plea of guilty, sentence and judgment will be vacated and trial date will be set on the charges to which the plea of guilty was made;

4. That upon the request of the State any charges that may have been dismissed as part of a plea agreement will be reinstated and will also be set for trial;

5. That if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's plea of guilty and sentence will be provided without cost to the defendant and counsel will be appointed to assist the defendant with the preparation of the motion; and

6. That in any appeal taken from the judgment on the plea of guilty any issue or claim of error not raised in the motion to vacate the judgment and to withdraw the plea of guilty shall be deemed waived." (Emphases in original.)

¶ 4 Defendant signed the form and dated it October 21, 2009.

¶ 5 On October 21, 2009, the court entered a written order sentencing defendant to 24 months' probation and to 11 days (already served) in jail. The order also recited that defendant was to pay $505, which included "all fines, fees, costs, penalties and assessments." A printout certified by the circuit court clerk's office specifies these charges, including the $200 domestic-violence fine.

¶ 6 On November 9, 2009, defendant filed a *pro se* notice of appeal. On May 6, 2010, after we had remanded the cause so that the trial court could appoint counsel for defendant, she filed an amended notice of appeal.

¶ 7 On appeal, defendant contends first that the trial court did not substantially comply with its obligations under Rule 605(c), which states:

> "In all cases in which a judgment is entered upon a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:
>
> (1) that the defendant has the right to appeal;
>
> (2) that prior to taking an appeal the defendant must file in the trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion;
>
> (3) that if the motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made;
>
> (4) that upon the request of the State any charges that may have been dismissed as part of a plea agreement will be reinstated and will also be set for trial;

> (5) that if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's plea of guilty and sentence will be provided without cost to the defendant and counsel will be appointed to assist the defendant with the preparation of the motions; and (6) that in any appeal taken from the judgment on the plea of guilty any issue or claim of error not raised in the motion to vacate the judgment and to withdraw the plea of guilty shall be deemed waived." Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001).

Defendant notes that, at the guilty-plea hearing, the trial judge did not explain defendant's appeal rights to her but merely asked whether she had read and understood the form. Defendant does not assert that Rule 605(c) required oral admonishments, but she contends that she had the right to "be admonished by the [judge herself] in open court at the time of the sentencing." Defendant reasons that, because the judge did not personally admonish her of her appeal rights, there was no compliance with Rule 605(c).

¶ 8 We have found no opinion addressing the specific issue that this case raises. However, we rely on accepted principles for construing supreme court rules and on a consideration of whether, under the particular facts here, defendant received the benefit to which Rule 605(c) entitled her.

¶ 9 We review *de novo* whether a court complied with a supreme court rule. *People v. Lloyd*, 338 Ill. App. 3d 379, 384 (2003). To decide this question, we must first ascertain the rule's meaning, which we also consider *de novo*, applying the same principles we use for construing statutes. *Longstreet v. Cottrell, Inc.*, 374 Ill. App. 3d 549, 551-52 (2007). Among these is that the best guide to the rule's meaning is the rule's language itself, which, if unambiguous, must be applied straightforwardly. *People v. Hill*, 402 Ill. App. 3d 903, 910 (2010).

¶ 10 We turn first to the construction of Rule 605(c). The rule requires the trial court to admonish a defendant "at the time of imposing sentence" (Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2007)), but it does not require *oral* admonishments. Defendant concedes that we may not read such a requirement into the rule. See *City of Chicago v. Cotton*, 356 Ill. App. 3d 1, 4 (2005). Nonetheless, defendant contends that she was not admonished at the time of sentencing. Defendant analogizes this case to one in which a defendant who pleads not guilty is not admonished at the time of the plea of the possibility of trial *in absentia* (725 ILCS 5/113—4(e) (West 2008); see *People v. Phillips*, 394 Ill. App. 3d 808, 812 (2009), *aff'd*, No. 109413 (Ill. March 24, 2011)).

¶ 11 Rule 605(c) requires that, "at the time of sentencing," the trial court admonish the defendant substantially as provided in the remainder of the rule. Defendant does not contend that she was never admonished of the appeal rights set out in subsections (1) through (6) of the rule; the form that she signed tracked these subsections essentially verbatim. Defendant signed the form and signed the acknowledgment that she had read it. Therefore, defendant's sole claim of error is that she was not properly admonished *at the time of sentencing*. Under the circumstances of this case, we cannot say that defendant has shown any error. Although we have found no authority directly on point, we are satisfied that the intent behind Rule 605(c) was observed here.

¶ 12 We note that the phrase "at the time of sentencing" cannot be taken too literally. Defendant does not contend that a trial judge must admonish a defendant at the very time that she is pronouncing her sentence. Such a requirement would be unreasonable if it could be observed at all. Defendant concedes that providing the admonishments immediately after pronouncing sentence is sufficient. We believe that, in this case, the judge did the functional equivalent of that.

¶ 13 The record shows that defendant read and signed the admonishment form on the same day that she pleaded guilty. At the guilty-plea hearing, defendant stated that she had read and signed the form. It is a fair inference that she did so immediately before the hearing—and certainly after she had decided to plead guilty and became aware of the importance of knowing her appeal rights upon entering a negotiated plea. Immediately after sentencing defendant, the judge asked her whether she had read and understood the admonishments and whether she had any questions about her appeal rights. Defendant, who was represented by counsel, told the judge that she understood her appeal rights and that she did not have any questions about them.

¶ 14 Under these circumstances, we cannot say that defendant was not admonished at the time of sentencing. The admonishments directly preceded the entry of her plea. Immediately after sentencing defendant, the judge gave her the opportunity to clear up any confusion or uncertainty that she may have had about her rights; defendant responded that she understood her rights and had no questions about them. Defendant does not suggest how this procedure was inherently less satisfactory than had the judge waited until after pronouncing sentence to inform defendant of her appeal rights.

¶ 15 We also observe that Rule 605(c) states only that "the trial court shall advise the defendant substantially as follows." Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001). By contrast, under Rule 401(a), the trial court may not allow a waiver of counsel "without first, *by addressing the defendant personally in open court*, informing him of and determining that he understands [his rights]." (Emphasis added.) Ill. S. Ct. R. 401(a), (eff. July 1, 1984). Under Rule 402(a), "[t]he court shall not accept a plea of guilty or a stipulation that the evidence is sufficient to convict without first, *by addressing the defendant personally in open court*, informing him of and determining that he

understands [his rights]." (Emphasis added.) Ill. S. Ct. R. 402(a) (eff. July 1, 1997). Finally, under Rule 402A(a), in a probation-revocation proceeding, the trial court may not accept an admission to a probation violation "without first *addressing the defendant personally in open court*, and informing the defendant of and determining that the defendant understands [his rights]." (Emphasis added.) Ill. S. Ct. R. 402A(a), (eff. Nov. 1, 2003).

¶ 16 The contrast between these three rules on the one hand and Rule 605(c) on the other strongly implies that the drafters of Rule 605(c) did not intend to require that the admonishments be delivered by the judge in open court. Had they intended such a restriction, they could have imposed it, as was done with Rules 401(a), 402(a), and 402A(a). Thus, providing the admonishments in writing shortly before the actual guilty-plea hearing is consistent with Rule 605(c), as long as, directly after being sentenced, the defendant has a full opportunity to inform the trial judge that she either does or does not understand her rights.

¶ 17 We believe that, under the particular facts of this case, we would strain reason to hold that defendant was not admonished "at the time of imposing sentencing." Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001). We stress that our decision is limited to these facts and that, under different circumstances, the procedure that the trial court used might raise issues that could be avoided with customary in-court oral admonishments immediately following sentencing. Those potential issues are not before us now.

¶ 18 Defendant analogizes this case to *Phillips*, in which the defendant was denied his statutory right to admonishments about a possible trial *in absentia*. To the extent that we may rely on this analogy rather than the meaning of Rule 605(c) itself, we find it unconvincing.

¶ 19 In *Phillips*, the defendant was present at his trial but, after missing the jury deliberations and the hearing on his posttrial motion, he was sentenced *in absentia*. On appeal, he argued that the

sentencing procedure violated section 113—4(e) of the Code of Criminal Procedure of 1963, which states, "If a defendant pleads not guilty, the court shall advise him at that time or at any later court date on which he is present that *** his failure to appear would constitute a waiver of his right to confront the witnesses against him and trial could proceed in his absence." 725 ILCS 5/113—4(e) (West 2002). The appellate court agreed. The court noted that the defendant had signed a bail bond slip. The front of the slip stated in part, "I hereby certify that I understand the consequences of failure to appear for trial as required." The back advised the defendant in language that tracked section 113—4(e). *Phillips*, 394 Ill. App. 3d at 811. The court held that the admonishment on the bail bond slip did not satisfy the statute. The court explained that, although the statute did not require oral admonishments, it did require "that the *court* admonish the defendant at the time of his arraignment or on any later court date on which he is present." (Emphasis in original.) *Id.* at 812.

¶ 20 We do not agree with defendant that *Phillips* supports her position. Here, the admonishments were contained not on a bail bond slip but on a form to which the judge referred in questioning defendant immediately after pronouncing sentence. The trial judge's close involvement in the admonishment process distinguishes this case from *Phillips*.

¶ 21 Because the trial court complied with Rule 605(c) but defendant failed to move to withdraw her plea, we must dismiss the appeal. See *People v. Flowers*, 208 Ill. 2d 291, 301 (2003). That said, we have jurisdiction of the cause (see *In re William M.*, 206 Ill. 2d 595, 601-03 (2003)), and thus we may grant defendant a credit of $55 against her domestic-violence fine, because she was in custody for 11 days before sentencing. The State confesses error on this issue. We agree with the parties that, because a defendant who is incarcerated on a bailable offense is, upon application, entitled to a credit of $5 per day against such a fine (725 ILCS 5/110—14(a) (West 2008)), defendant must

receive the credit. Therefore, we modify the judgment by reducing defendant's domestic-violence fine to $145. See *People v. Collins*, 328 Ill. App. 3d 366, 372-73 (2002).

¶ 22 The judgment of the circuit court of Du Page County is modified, and the appeal is dismissed.

¶ 23 Judgment modified; appeal dismissed.